

HUMAN SERVICES BOARD

INTRODUCTION

LEGAL AND FACTUAL ISSUES

The DCHC or Katie Beckett program provides more liberal financial eligibility criteria for Medicaid benefits to certain children with extraordinary medical needs. The parties agree that to qualify for the Katie Beckett program

it must be shown that a child requires a level of medical and/or personal care that is provided by a hospital, nursing home, or intermediate care facility for the mentally retarded (ICF-MR), and that such care can be provided in the child's home at no greater cost than in an appropriate institution. See W.A.M. § 200.23. The stated goal of the program is to encourage and support families to provide home-based care for children who might otherwise be in an institution.

In this case there does not appear to be any dispute that the petitioner and his wife provide care for their daughter for less cost than they would be charged if the child were admitted to an ICF-MR. The issue, however, is whether sufficient evidence establishes that the child's medical and developmental status is such that she requires such a level of care—i.e., would she be eligible for admission into an ICF-MR?

In addressing this question the Department maintains that in Vermont the criteria for admission to an ICF-MR is set forth as follows (per a Department Memorandum dated February 24, 1993):

- a. The individual is mentally retarded or has a related condition, AND
- b. The individual has one of the following:

(1) A severe physical disability requiring substantial and/or routine assistance in performing self-care and daily living functions;

(2) Substantial deficits in self-care and daily living skills requiring intensive, facility-based training; OR

(3) Significantly maladaptive social and/or interpersonal behavior patterns requiring an ongoing, professionally-supervised program of intervention.

Although the petitioner takes issue with whether the federal regulations consider physical disability, the fact that the above criteria are set forth in the disjunctive appears to render them more liberal than the federal definitions cited by the petitioner. Also, due to the fact that the petitioner is alleging some physical as well as developmental disabilities for his daughter, it appears that application of the above criteria would be to his benefit. (See Fair Hearing No. 19,059.)

The following facts do not appear to be in dispute, and are taken largely from the petitioner's written arguments.

FINDINGS OF FACT

1. The petitioner's daughter was born on October 21, 2005, and has been diagnosed with Down Syndrome.

2. The child had severe neonatal problems, and was hospitalized for surgery and received other emergency care in December 2005.

3. As of January 30, 2006, the child was cleared to attend day care. On January 26, 2006 she began receiving early intervention services through the Family Infant Toddler Program near her hometown.

4. The services the child receives from this program are evaluated at least quarterly, and an updated evaluation is done annually. Through this program, the child has received weekly visits from a physical therapist, which last up to one hour, and weekly visits of short duration from a developmental specialist. She has also been evaluated by a nutritionist, and her parents closely supervise and monitor her food intake. As of August 2006 it was anticipated that she would also be evaluated for occupational therapy and speech and language services.

5. Because of her susceptibility to health problems the child visits with her pediatrician once a month. She will need to have yearly evaluations for her vision, hearing, and thyroid problems.

6. The child has had frequent colds and once received antibiotics for an ear infection. In summer 2006 she was hospitalized briefly for respiratory problems.

7. In addition to her weekly visits from the physical therapist the child's mother does physical therapy with her three times a day. It is anticipated that the child will need this level of physical therapy until she is school aged, and then ongoing therapy for the foreseeable future.

8. Since May 2006 the child has worn a special "helmet" to address "cranial vault asymmetry".

9. There is no question that much of the services and supervision the child receives are the same types provided by institutional facilities. There is also no question that her parents have assumed a significant personal and financial burden for her care. However, nothing in the record suggests that the child's condition would qualify or is appropriate for institutional care of any type.

ORDER

The Department's decision is affirmed.

REASONS

As is the case in Fair Hearing No. 20,399 (also pending before the Board at this time), the petitioner herein

essentially argues that because his daughter "has a condition associated with mental retardation" and "receives health and rehabilitation services", she meets the definition regarding institutional level of care. While the amount of services this child receives is significantly greater than in the other case, it similarly cannot be concluded that her needs rise to the level of institutional care.

Nothing in the medical record or the facts alleged by the petitioner indicates that she would be appropriate for institutional care. The evidence may establish that she has "mental retardation or a related condition" and that she is "in need of active treatment". However, nothing in the federal and state regulations, or in any case law that has been brought to the Board's attention, establishes that a mere diagnosis of mental retardation and the need for *some* level of active treatment establishes eligibility for institutional care. None of this child's health care providers have remotely suggested that the present or foreseeable level of her need for treatment makes institutional care necessary or appropriate.¹ Much of the treatment she receives may be similar to treatment offered in

¹ If and when the petitioner can make such a showing, he is free to reapply on his daughter's behalf. (See Fair Hearing No. 19,059.)

an ICF-MR, but only in *type*. The evidence simply does not establish that it is of the same *level*.

It certainly appears that the child's parents have made considerable personal sacrifices and have incurred significant financial costs in getting treatment for her. Unfortunately, however, this is insufficient to meet the criteria necessary for her to be eligible for the Katie Beckett program.

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